

Environmental Protection Agency

§ 312.21

defined in 21 U.S.C. 802) to the subject property.

(f) *Performance factors.* In performing each of the standards and practices set forth in this subpart and to meet the objectives stated in paragraph (e) of this section, the persons identified under §312.1(b) or the environmental professional as defined in §312.10 (as appropriate to the particular standard and practice) must seek to:

(1) Gather the information that is required for each standard and practice listed in this subpart that is publicly available, obtainable from its source within reasonable time and cost constraints, and which can practicably be reviewed; and

(2) Review and evaluate the thoroughness and reliability of the information gathered in complying with each standard and practice listed in this subpart taking into account information gathered in the course of complying with the other standards and practices of this subpart.

(g) To the extent there are data gaps (as defined in §312.10) in the information developed as part of the inquiries in paragraph (e) of this section that affect the ability of persons (including the environmental professional) conducting the all appropriate inquiries to identify conditions indicative of releases or threatened releases in each area of inquiry under each standard and practice such persons should identify such data gaps, identify the sources of information consulted to address such data gaps, and comment upon the significance of such data gaps with regard to the ability to identify conditions indicative of releases or threatened releases of hazardous substances [and in the case of persons identified in §312.1(b)(2), hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)] on, at, in, or to the subject property. Sampling and analysis may be conducted to develop information to address data gaps.

(h) Releases and threatened releases identified as part of the all appropriate inquiries should be noted in the report of the inquiries. These standards and practices however are not intended to require the identification in the writ-

ten report prepared pursuant to §312.21(c) of quantities or amounts, either individually or in the aggregate, of hazardous substances pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802) that because of said quantities and amounts, generally would not pose a threat to human health or the environment.

§ 312.21 Results of inquiry by an environmental professional.

(a) Persons identified under §312.1(b) must undertake an inquiry, as defined in paragraph (b) of this section, by an environmental professional, or conducted under the supervision or responsible charge of, an environmental professional, as defined in §312.10. Such inquiry is hereafter referred to as "the inquiry of the environmental professional."

(b) The inquiry of the environmental professional must include the requirements set forth in §§312.23 (interviews with past and present owners * * *), 312.24 (reviews of historical sources * * *), 312.26 (reviews of government records), 312.27 (visual inspections), 312.30 (commonly known or reasonably ascertainable information), and 312.31 (degree of obviousness of the presence * * * and the ability to detect the contamination * * *). In addition, the inquiry should take into account information provided to the environmental professional as a result of the additional inquiries conducted by persons identified in §312.1(b) and in accordance with the requirements of §312.22.

(c) The results of the inquiry by an environmental professional must be documented in a written report that, at a minimum, includes the following:

(1) An opinion as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances [and in the case of inquiries conducted for persons identified in §312.1(b)(2) conditions indicative of releases and threatened releases of pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)] on, at, in, or to the subject property;

§ 312.22

(2) An identification of data gaps (as defined in §312.10) in the information developed as part of the inquiry that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances [and in the case of inquiries conducted for persons identified in §312.1(b)(2) conditions indicative of releases and threatened releases of pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)] on, at, in, or to the subject property and comments regarding the significance of such data gaps on the environmental professional's ability to provide an opinion as to whether the inquiry has identified conditions indicative of releases or threatened releases on, at, in, or to the subject property. If there are data gaps such that the environmental professional cannot reach an opinion regarding the identification of conditions indicative of releases and threatened releases, such data gaps must be noted in the environmental professional's opinion in paragraph (c)(1) of this section; and

(3) The qualifications of the environmental professional(s).

(d) The environmental professional must place the following statements in the written document identified in paragraph (c) of this section and sign the document:

"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."

"[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."

§ 312.22 Additional inquiries.

(a) Persons identified under §312.1(b) must conduct the inquiries listed in paragraphs (a)(1) through (a)(4) below and may provide the information associated with such inquiries to the environmental professional responsible for conducting the activities listed in §312.21:

40 CFR Ch. I (7–1–08 Edition)

(1) As required by §312.25 and if not otherwise obtained by the environmental professional, environmental cleanup liens against the subject property that are filed or recorded under federal, tribal, state, or local law;

(2) As required by §312.28, specialized knowledge or experience of the person identified in §312.1(b);

(3) As required by §312.29, the relationship of the purchase price to the fair market value of the subject property, if the property was not contaminated; and

(4) As required by §312.30, and if not otherwise obtained by the environmental professional, commonly known or reasonably ascertainable information about the subject property.

§ 312.23 Interviews with past and present owners, operators, and occupants.

(a) Interviews with owners, operators, and occupants of the subject property must be conducted for the purposes of achieving the objectives and performance factors of §312.20(e) and (f).

(b) The inquiry of the environmental professional must include interviewing the current owner and occupant of the subject property. If the property has multiple occupants, the inquiry of the environmental professional shall include interviewing major occupants, as well as those occupants likely to use, store, treat, handle or dispose of hazardous substances [and in the case of inquiries conducted for persons identified in §312.1(b)(2) pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)], or those who have likely done so in the past.

(c) The inquiry of the environmental professional also must include, to the extent necessary to achieve the objectives and performance factors of §312.20(e) and (f), interviewing one or more of the following persons:

(1) Current and past facility managers with relevant knowledge of uses and physical characteristics of the property;

(2) Past owners, occupants, or operators of the subject property; or

(3) Employees of current and past occupants of the subject property.